

AMENDED IN SENATE JUNE 28, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 849**

**Introduced by Assembly ~~Member Berg~~ Members Leno, Nunez,  
Goldberg, Koretz, Laird, and Lieber**

*(Principal coauthors: Senators Kehoe, Kuehl, and Migden)*

**(Coauthors: Assembly Members Berg, Calderon, Chan, Chu,  
Dymally, Evans, Hancock, Jones, Klehs, Levine, Montanez,  
Nation, Oropeza, Ridley-Thomas, Ruskin, Saldana, and Yee)**

*(Coauthors: Senators Alarcon, Alquist, Cedillo, Figueroa, Simitian,  
and Speier)*

February 18, 2005

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An act to ~~add Chapter 2.5 (commencing with Section 7059.5) to  
Part 1.7 of Division 6 of the Fish and Game Code, relating to fisheries;~~  
*amend Sections 300, 301, and 302 of, and to add Section 403 to, the  
Family Code, relating to marriage.*

LEGISLATIVE COUNSEL'S DIGEST

AB 849, as amended, ~~Berg Leno. Fish and game: marine research.~~  
*Gender-neutral marriage.*

*Existing law provides that marriage is a personal relation arising  
out of a civil contract between a man and a woman. Existing law  
provides for the issuance of marriage licenses and imposes duties on  
county clerks in that connection, as specified. Existing law, enacted by  
initiative measure, further provides that only marriage between a man  
and a woman is valid or recognized in this state.*

*This bill would enact the Religious Freedom and Civil Marriage  
Protection Act, which would instead provide that marriage is a  
personal relation arising out of a civil contract between 2 persons.  
The bill would make conforming changes with regard to the consent*

to, and solemnization of, marriage, and would make related findings and declarations.

By adding to the duties of county employees, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law provides for the propagation of fish and for the establishment of an ocean resources enhancement and hatchery plan for the purpose of basic and applied research on the propagation, rearing, stocking, and distribution of adversely affected marine fish species that are important to sport and commercial fishing.~~

~~This bill would declare that the policy of the state is to facilitate collaboration between fishing men and women and scientists and researchers employed by or contracted to the department in conducting ocean and marine fisheries research, including, but not limited to, the utilization of the knowledge of fishing men and women, their employment in fish stock surveys, data collection, and deployment of scientific equipment, and the utilization of fishing vessels, whenever practical, to serve as platforms for ocean and marine resources research.~~

~~This bill would also make legislative findings and declarations relating to the utilization of the knowledge of fishing men and women as platforms for ocean and marine fishery research.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. This act shall be known and may be cited as the
- 2     “Religious Freedom and Civil Marriage Protection Act.”
- 3     SEC. 2. It is the intent of the Legislature that this act be
- 4     interpreted consistently with the guarantees of the First
- 5     Amendment to the United States Constitution and of Section 4 of

1 *Article I of the California Constitution to free exercise of religion*  
2 *and enjoyment of religion without discrimination or preference.*

3 *SEC. 3. The Legislature finds and declares as follows:*

4 *(a) Civil marriage is a legal institution recognized by the state*  
5 *in order to promote stable relationships and to protect*  
6 *individuals who are in those relationships. The institution of*  
7 *marriage also provides important protections for the families of*  
8 *those who are married, including not only any children or other*  
9 *dependents they may have, but also members of their extended*  
10 *families.*

11 *(b) From 1850 to 1977, the statutory definition of marriage in*  
12 *California was gender-neutral, containing no reference to*  
13 *“man” or “woman.”*

14 *(c) In 1948, the California Supreme Court became the first*  
15 *state court in the country to strike down a law prohibiting*  
16 *interracial marriage. It was the only state supreme court to do so*  
17 *before the United States Supreme Court invalidated all those*  
18 *laws in 1967. The California Supreme Court held that “marriage*  
19 *is . . . something more than a civil contract subject to regulation*  
20 *by the state; it is a fundamental right of free men...Legislation*  
21 *infringing such rights must be based upon more than prejudice*  
22 *and must be free from oppressive discrimination to comply with*  
23 *the constitutional requirements of due process and equal*  
24 *protection of the laws” (Perez v. Sharp (1948) 32 Cal.2d 711,*  
25 *714-15).*

26 *(d) In 1977, the Legislature amended the state’s marriage law*  
27 *to specify that, as a matter of state law, the gender-neutral*  
28 *definition of marriage could permit same-sex couples to marry*  
29 *and have access to equal rights and therefore would be changed.*  
30 *The gender-specific definition of marriage that the Legislature*  
31 *adopted specifically discriminated in favor of different-sex*  
32 *couples and, consequently, discriminated and continues to*  
33 *discriminate against same-sex couples.*

34 *(e) The highest courts in three states have held that denying*  
35 *the legal rights and obligations of marriage to same-sex couples*  
36 *is constitutionally suspect or impermissible under their*  
37 *respective state constitutions. These states are Hawaii, Vermont,*  
38 *and Massachusetts. The highest courts in seven Canadian*  
39 *provinces have similarly ruled that marriage laws that*  
40 *discriminate in favor of different-sex couples to the exclusion of*

1 *same-sex couples violate the rights of same-sex couples and*  
2 *cannot stand.*

3 *(f) California's discriminatory exclusion of same-sex couples*  
4 *from marriage violates the California Constitution's guarantee*  
5 *of due process, privacy, equal protection of the law, and free*  
6 *expression by arbitrarily denying equal marriage rights to*  
7 *lesbian, gay, and bisexual Californians.*

8 *(g) California's discriminatory exclusion of same-sex couples*  
9 *from marriage harms same-sex couples and their families by*  
10 *denying those couples and their families specific legal rights and*  
11 *responsibilities under state law and by depriving members of*  
12 *those couples and their families of a legal basis to challenge*  
13 *federal laws that deny access to the many important federal*  
14 *benefits and obligations provided only to spouses. Those federal*  
15 *benefits include the right to file joint federal income tax returns,*  
16 *the right to sponsor a partner for immigration to the United*  
17 *States, the right to social security survivor's benefits, the right to*  
18 *family and medical leave, and many other substantial benefits*  
19 *and obligations.*

20 *(h) Other jurisdictions have chosen to treat as valid or*  
21 *otherwise recognize marriages between same-sex couples.*  
22 *California's discriminatory marriage law therefore also harms*  
23 *California's same-sex couples when they travel to other*  
24 *jurisdictions by preventing them from having access to the rights,*  
25 *benefits, and protections those jurisdictions provide only to*  
26 *married couples.*

27 *(i) California's discriminatory exclusion of same-sex couples*  
28 *from marriage further harms same-sex couples and their families*  
29 *by denying them the unique public recognition and affirmation*  
30 *that marriage confers on heterosexual couples.*

31 *(j) The Legislature has an interest in encouraging stable*  
32 *relationships regardless of the gender or sexual orientation of*  
33 *the partners. The benefits that accrue to the general community*  
34 *when couples undertake the mutual obligations of marriage*  
35 *accrue regardless of the gender or sexual orientation of the*  
36 *partners.*

37 *(k) It is the intent of the Legislature in enacting this act to end*  
38 *the pernicious practice of marriage discrimination in California.*  
39 *This act is in no way intended to alter Section 308.5 of the*  
40 *Family Code, which prohibits California from treating as valid*

1 *or otherwise recognizing marriages of same-sex couples*  
2 *solemnized outside of California.*

3 *SEC. 4. Section 300 of the Family Code is amended to read:*

4 300. (a) Marriage is a personal relation arising out of a civil  
5 contract between ~~a man and a woman~~ *two persons*, to which the  
6 consent of the parties capable of making that contract is  
7 necessary. Consent alone does not constitute marriage. Consent  
8 must be followed by the issuance of a license and solemnization  
9 as authorized by this division, except as provided by Section 425  
10 and Part 4 (commencing with Section 500).

11 (b) *Where necessary to implement the rights and*  
12 *responsibilities of spouses under the law, gender-specific terms*  
13 *shall be construed to be gender-neutral, except with respect to*  
14 *Section 308.5.*

15 *SEC. 5. Section 301 of the Family Code is amended to read:*

16 301. ~~An~~ *Two* unmarried ~~male~~ *persons* of the age of 18 years  
17 or older, ~~and an unmarried female of the age of 18 years or older,~~  
18 ~~and~~ *who are* not otherwise disqualified, are capable of consenting  
19 to and consummating marriage.

20 *SEC. 6. Section 302 of the Family Code is amended to read:*

21 302. An unmarried ~~male or female~~ *person* under the age of 18  
22 years is capable of consenting to and consummating marriage if  
23 each of the following documents is filed with the county clerk  
24 issuing the marriage license:

25 (a) The written consent of the parents of each underage  
26 person, or of one of the parents or the guardian of each underage  
27 person.

28 (b) A court order granting permission to the underage person  
29 to marry, obtained on the showing the court requires.

30 *SEC. 7. Section 403 is added to the Family Code, to read:*

31 403. *No priest, minister, or rabbi of any religious*  
32 *denomination, and no official of any nonprofit religious*  
33 *institution authorized to solemnize marriages, shall be required*  
34 *to solemnize any marriage in violation of his or her right to free*  
35 *exercise of religion guaranteed by the First Amendment to the*  
36 *United States Constitution or by Section 4 of Article I of the*  
37 *California Constitution.*

38 *SEC. 8. The Legislature finds and declares that this act does*  
39 *not amend or modify Section 308.5 of the Family Code, as*  
40 *enacted by an initiative measure, to the extent that Section 308.5*

1 addresses only marriages from other jurisdictions. The  
2 Legislature further finds that Sections 300 and 308.5 of the  
3 Family Code have been declared unconstitutional by a state  
4 coordination trial judge appointed by the Judicial Council, and  
5 the Legislature declares that the purpose of this act is to correct  
6 the constitutional infirmities of Section 300, which was enacted  
7 by the Legislature. The Legislature further finds that the  
8 constitutional infirmities of Section 308.5 of the Family Code,  
9 which was enacted through the initiative process, cannot be  
10 corrected by the Legislature and that the California Supreme  
11 Court is the governmental body that has authority to make a final  
12 determination regarding the meaning, validity, or invalidity of  
13 Section 308.5.

14 SEC. 9. If the Commission on State Mandates determines that  
15 this act contains costs mandated by the state, reimbursement to  
16 local agencies and school districts for those costs shall be made  
17 pursuant to Part 7 (commencing with Section 17500) of Division  
18 4 of Title 2 of the Government Code.

19 ~~SECTION 1. Chapter 2.5 (commencing with Section 7059.5)~~  
20 ~~is added to Part 1.7 of Division 6 of the Fish and Game Code, to~~  
21 ~~read:~~

22  
23 ~~CHAPTER 2.5 MARINE FISHERIES AND OCEAN ECOSYSTEM~~  
24 ~~RESEARCH~~  
25

26 ~~7059.5. The Legislature finds and declares all of the~~  
27 ~~following:~~

28 ~~(a) Research, including ongoing data collection and periodic~~  
29 ~~resource assessments, is essential to the foundation of~~  
30 ~~understanding necessary for the conservation, use, and~~  
31 ~~management of the state's ocean waters and the marine resources~~  
32 ~~therein.~~

33 ~~(b) Working fishing men and women and other mariners~~  
34 ~~possess special knowledge of ocean waters and resources that~~  
35 ~~should be utilized by marine scientists, fishery biologists, and~~  
36 ~~resource managers in helping to create a full understanding of~~  
37 ~~ocean ecosystems.~~

38 ~~(c) The knowledge of fishing men and women has been tapped~~  
39 ~~and utilized through cooperative research programs in New~~  
40 ~~England and elsewhere that have proven invaluable in enhancing~~

1 ~~the understanding of ocean ecosystems and marine living~~  
2 ~~resources.~~

3 ~~(d) The state should develop a formal and ongoing program to~~  
4 ~~utilize the knowledge of fishing men and women, including the~~  
5 ~~utilization of collaborative ocean and fishery research projects~~  
6 ~~with marine scientists and the utilization of fishing craft,~~  
7 ~~whenever practical, as platforms for ocean and marine fishery~~  
8 ~~research.~~

9 ~~7059.6. It is the policy of the state to facilitate collaboration~~  
10 ~~between fishing men and women and scientists and researchers~~  
11 ~~employed by or contracted to the department in conducting ocean~~  
12 ~~and marine fisheries research, including, but not limited to, the~~  
13 ~~utilization of the knowledge of fishing men and women, their~~  
14 ~~employment in fish stock surveys, data collection, and~~  
15 ~~deployment of scientific equipment, and the utilization of fishing~~  
16 ~~vessels, whenever practical, to serve as platforms for ocean and~~  
17 ~~marine resources research.~~